IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.2935 of 2006
To
FIRST APPEAL No.2985 of 2006
WITH
FIRST APPEAL No.3247 of 2006.

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT & ANR. - Appellants
Versus
BHIKHU GAGJI - Respondent(s)

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Appearance :
MR SS SHAH, GOVERNMENT PLEADER for Appellants in First Appeal Nos.2935 to 2959 of 2006 AND MR DIPEN DESAI, AGP for Appellants in First Appeal Nos.2960 to 2985 of 2006.
MR VIMAL M PATEL for for Claimants.

FIRST APPEAL No.3247 of 2006
MR VIMAL M PATEL for Appellant.
MR DIPEN DESAI, AGP for Respondents.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 05/09/2006

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

All the above numbered appeals filed under Section 54 of the Land Acquisition Act, 1894 ("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated August 26, 2004 rendered by the learned Civil Judge (S.D.), Junagadh, in Land Reference Case Nos.667 of 1999 to 695 of 1999 and Land Reference Case No.697 of 1999 to 718 of 1999 by which the claimants are ordered to be paid additional compensation at the rate of Rs.3.49/- per square metre for their acquired irrigated lands and Rs.3.19/- per square metre for their acquired non-irrigated lands over and above the compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.3/- per square metre for irrigated lands and Rs.2/- per square metre for non-irrigated lands.

2. A proposal was received from the Executive Engineer, Irrigation Division, Junagadh, to acquire

the lands of Village: Sarsai, Taluka: Visavadar, District: Junagadh, for the public purpose of Dhrafad Irrigation Project situated in the sim of Village Sarsai. On consideration of the said proposal, the State Government was satisfied that the lands of Village Sarsai were likely to be needed for the said public purpose. Therefore, a notification under Section 4 of the Act was issued, which was published in the official gazette on June 2, 1987. The landowners were thereafter served with the notices under Section 4 of the Act. They opposed the proposed acquisition. After considering their objections, a report was forwarded to the State Government as contemplated by Section 5A (2) of the Act. On scrutiny of the said report, the State Government was satisfied that the lands of Village Sarsai specified in the notification published under Section 4(1) of the Act were needed for the public purpose of Dhrafad Irrigation Project. Therefore, a declaration under Section 6 of the Act was made, which was published in the official gazette on January 12, 1989. The interested persons were thereafter served with notices under Section 9 of the Act for determination

of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed the compensation at the rate of Rs.13/- per square metre. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated March 30, 1989, offered to the claimants, compensation at the rate of Rs.3/- per square metre for irrigated lands and Rs.2/- per square metre for non-irrigated lands. The claimants were of the opinion that the offer of compensation made by the Land Acquisition Officer was totally inadequate. Therefore, they submitted applications requiring the Special Land Acquisition Officer to refer the matters to the Court for determination of just amount of compensation payable to them. Accordingly, the references were made to the District Court, Junagadh, where they were registered as noticed earlier.

3. On behalf of the claimants, witness Limbabhai Kanabhai Rabadiya was examined at Exhibit 46. Over and above stating that the lands acquired were highly fertile and that each claimant was

earning substantial income from the sale of agricultural produces, the witness produced two previous awards of the Reference Court relating to the lands of the same village in support of the claim of the claimants for enhanced compensation. According to the said witness, earlier from the same village, the lands were acquired for the same purpose pursuant to the notification issued under Section 4 of the Act, which was published in the official gazette on June 4, 1987 wherein the Special Land Acquisition Officer had awarded compensation to the claimants at the rate of Rs.3/- per square metre for irrigated lands and Rs.2/- per square metre for non-irrigated lands as well as Rs.1/- per Are for *kharaba* lands, but in Land Acquisition Reference Case Nos.499 of 1988 to 537 of 1988, the Reference Court had awarded compensation to the claimants at the rate of Rs.9.31/- per square metre for irrigated lands and Rs.6.98/- per square metre for non-irrigated lands. The witness for the claimants produced the said award for consideration of the Reference Court at Exhibit 21. The case of the said witness was that the award passed by the Reference Court was modified by the

High Court in First Appeal No.3351 of 1999 to 3390 of 1999 decided by the Division Bench comprising M.H.Kadri & J.R.Vora, JJ. on November 2, 1999 and it was held that the claimants were entitled to compensation to Rs.5.90/- per square metre for irrigated lands and Rs.4.72/- per square metre for non-irrigated lands. To substantiate the same, the witness produced copy of the judgment of the High Court at Exhibit 23. The witness further mentioned before the Reference Court that the judgment of the High Court was challenged before the Supreme Court and the Supreme Court had confirmed the same. To substantiate this claim, the witness produced copy of the order passed by the Supreme Court at Exhibit 24. The witness also produced another previous award of the Reference Court relating to the lands of this very Village at Exhibit 37. Though this witness was cross-examined by the learned counsel for the acquiring authorities, nothing substantial could be elicited.

3.1 On behalf of the State Government, witness Hareshkumar Narottambhai Limbark was examined at

Exhibit 48. At the relevant time, he was serving as Deputy Mamlatdar in the office of the Deputy Collector, Land Acquisition Office. It was claimed by him that the Land Acquisition Officer before making the award, had taken into consideration the sale instances of the last five years and as fair amount of compensation was determined by him, the claimants were not entitled to enhanced compensation. However, in cross-examination, the witness had to admit that he had no personal knowledge about the acquired lands and was deposing before the Court on the basis of record of the case.

4. On appreciation of the evidence adduced by the parties, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of this very village produced at Exhibit 21, which was modified by the High Court and confirmed by the Supreme Court, was a relevant piece of evidence for the purpose of determining the market value of the lands acquired in the instant case. It was noticed that in previous case notification under Section 4 of the Act was published

in the official gazette on June 4, 1987 whereas in the instant case notification under Section 4 of the Act was published in the official gazette on June 2, 1988 and in view of time gap of one year in publication of the notifications published under Section 4 of the Act, the claimants were entitled to reasonable rise in price of the lands at the rate of 10% per year. In ultimate analysis, the Reference Court has awarded additional compensation to the claimants at the rate of Rs.3.49/- per square metre for irrigated lands and Rs.3.19/- per square metre for non-irrigated lands by the impugned judgment and award giving rise to the above numbered appeals.

5. This Court has heard Mr.Dipen Desai, learned Assistant Government Pleader for the appellants, and Mr.Vimal M.Patel, learned counsel for the claimant/claimants in each appeal. This Court has also considered the documentary as well as oral evidence produced by the learned counsels for the parties for perusal of the Court.

6. From the record of the case, it is evident that feeling aggrieved by the offer of the compensation made by the Land Acquisition Officer, References were sought by the claimants. Before the Reference Court enhanced compensation was never claimed either on the basis of sale instances or on the basis of yield. The claimants had placed reliance on the two previous awards of the Reference Court relating to the lands of this very village. The plea that the sale instances referred to by the Land Acquisition Officer in his award should have been taken into consideration by the Reference Court while determining the market value of the lands acquired in the instant case, cannot be accepted for the simple reason that those sale deeds were never produced for the consideration of the Reference Court. It is well settled that the documents referred to by the Special Land Acquisition Officer in his award *ipso facto* do not become evidence in reference because reference proceedings are original proceedings and cannot be treated an appeal against the award of the Special Land Acquisition Officer. It was always open for the acquiring authorities to produce sale deeds which

were referred to and relied upon by the Land Acquisition Officer in his award before the Reference Court. However, admittedly, no sale deed was produced by the acquiring authorities for the purpose of consideration of the Reference Court. Therefore, it is difficult for this Court to come to the conclusion that determination of compensation payable to the claimants in the instant case stands vitiated for non-consideration of the documents referred to by the Special Land Acquisition Officer in his award.

7. As noticed earlier, the claimants had produced previous award of the Reference Court relating to the lands of this very village. Exhibit 21, which is the award of the Reference Court rendered in Land Acquisition Reference No.499 of 1988 to 537 of 1988 would indicate that therein the lands of village Sarsai were acquired for the public purpose of Dhrafad Irrigation Scheme pursuant to the notification issued under Section 4(1) of the Act, which was published in the official gazette on June 4, 1987. The errata of the notification was published in the official gazette in August 1987. The Special

Land Acquisition Officer by his award dated May 30, 1988 had offered compensation to the claimants at the rate of Rs.3/- per square metre for irrigated lands and Rs.2/- per square metre for non-irrigated lands. Feeling aggrieved, the references were sought and the Reference Court by judgment and award dated November 20, 1998 had awarded compensation to the claimants at the rate of Rs.9.31/- per square metre for irrigated lands and Rs.6.98/- per square metre for non-irrigated lands. Thereupon, the State had filed First Appeal Nos.3351 of 1999 to 3390 of 1999 in the High Court and the High Court by judgment dated November 2, 1999, held that the claimants were entitled to compensation at the rate of Rs.5.90/- per square metre for irrigated lands and Rs.4.72/- per square metre for non-irrigated lands. The decision rendered by the High Court was subjected to challenge before the Supreme Court, but Exhibit 24 indicates that Petitions for Special Leave to Appeal (Civil) filed by the State Government were rejected by order dated May 9, 2000. It is well settled principle of law that the previous award of the Reference Court, as modified by the higher forum relating to the lands of

the same village, can be taken into consideration for the purpose of determining the market value of the lands acquired subsequently from the same village. Under the circumstances, this Court is of the opinion that that the Reference Court did not commit any error in placing reliance on Exhibits 21, 23 and 24 for the purpose of determining the market value of the lands acquired in the instant case. The calculation of the compensation payable to the claimants on the basis of Exhibits 21, 23 and 24 is not in dispute before this Court. It is not disputed before this Court that there was gap of time of about one year in the publication of the notifications issued under Section 4(1) of the Act relating to the previous acquisition and the acquisition with which this Court is concerned. Therefore, the conclusion drawn by the Reference Court that the claimants would be entitled to reasonable rise in price at the rate of 10% per annum cannot be said to be erroneous more particularly when the same is found consistent with the principle laid down in catena of decisions of the Supreme Court. In fact, when the previous award of the Reference Court relating to the lands of the same

village is taken into consideration, what is relied upon is sale instance because the award has to be rendered by the Court after applying armchair rule. On re-appreciation of the facts of the case, the Court finds that the correct findings of fact have been recorded by the Reference Court to which settled principle of law has been applied. The learned Assistant Government Pleader could not persuade this Court to take view other than the one taken by the Reference Court and, therefore, First Appeal Nos.2935 of 2006 to 2985 of 2006 are liable to be dismissed.

8. Coming to First Appeal No.3247 of 2006 filed by Jina Kana and others, which arises from the Land Reference Case No.711 of 1999, this Court finds that therein the case of the appellants is that their lands, which were acquired, should have been treated as irrigated lands and they should have been awarded compensation on that basis. As far as this point is concerned, the relevant findings have been recorded by the Reference Court as under:

"*12. Considering the oral evidence and*

documentary evidence, the claimants have prayed for compensation as per the compensation awarded by the Hon'ble High Court vide their judgment Ex.23 and Ex.37. The claimant Limbabhai Kanabhai Rabadia has deposed vide Ex.46 that his land bearing Survey No.122/2 was irrigated land and was irrigating the above land through water of the well situated in survey No.125/1 and accordingly he has claimed that the compensation for the acquired land of survey No.122/2 be awarded as per the compensation applicable to the bagayat land and has also produced the abstract of village form No.16. It is true that as per Ex.40, there is a well in survey No.125/1. But on the sole evidence of the petitioners and Exh.40, it is difficult to agree with the submission of the learned advocate that the petitioner was irrigated his land bearing survey No.122/2 through well situated in survey No.125/1. The compensation awarded by the Land Acquisition Officer considering the land as jirayat land is proper and claimants is not entitled to get compensation that applicable to the bagayat land for his land bearing survey No.122/2."

Having gone through the record of the case, this Court fully concurs with the findings recorded

by the Reference Court, which are quoted above. Under the circumstances, the appeal filed by Jina Kana and others, cannot be accepted and is liable to be dismissed.

9. For the foregoing reasons, all the appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment.

[J.M.PANCHAL, J.]

[SMT. ABHILASHA KUMARI, J.]

Rajendra